

1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 SAN FRANCISCO DIVISION OF JUDGES
4

5 TESLA, INC.,

6 Respondent,

7 and

8 MICHAEL SANCHEZ, an individual,
9 JONATHAN GALESCU, an individual,
10 RICHARD ORTIZ, an individual, and
11 INTERNATIONAL UNION, UNITED
12 AUTOMOBILE, AEROSPACE AND
13 AGRICULTURAL IMPLEMENT WORKERS
14 OF AMERICA, AFL-CIO, a labor
15 organization,

16 Charging Parties.

Case Nos. 32-CA-197020
32-CA-197058
32-CA-197091
32-CA-197197
32-CA-200530
32-CA-208614
32-CA-210879
32-CA-220777

14
15 **POST-HEARING BRIEF OF CHARGING PARTIES**
16 **MICHAEL SANCHEZ, JONATHAN GALESCU, RICHARD ORTIZ, AND**
17 **INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND**
18 **AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO**

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AFL-CIO

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I

PRELIMINARY STATEMENT

Tesla has reacted to its employees' desire for a union to represent them the way that employers have for the last 100 years, both before and after passage of the National Labor Relations Act: by lashing out at those who it saw as the instigators of the organizing campaign, by taking away its employees' ability to speak for themselves, and by threatening all of its employees with reprisals for having the audacity to want to unionize. A company that prides itself as representing the cutting edge for new automotive technology has shown itself, when it comes to labor relations, to be a throwback of the worst sort.

The key to Section 7 and to the NLRA as a whole is freedom of choice. Section 7 gives employees the right to decide for themselves, without employer interference, whether they want to be represented by a union and to work together to demand better terms and conditions of employment. From that basic right spring all the other rights that Section 7 protects: employees not only have the right to decide for themselves, but to think for themselves, to exchange ideas and facts with each other and with persons outside the workplace, and to do so without fear of reprisal.

Tesla has attacked each of these rights. It has tried to prevent its employees from sharing information about their working conditions, it has threatened the employees who handed out flyers about safety and related issues to their coworkers and spoke to the Legislature about their treatment in the workplace, it has tried to co-opt the most active leaders and, when that failed, it has fired one of the principal Union organizers, Richard Ortiz, while disciplining another, José Moran. And finally, it has threatened to punish employees by stripping them of benefits if they have the audacity to choose union representation.

Tesla has shown just as little respect for the law as it shows for its employees' rights. It has offered patently false justifications for its unlawful conduct, while trying to evade liability for its abusive treatment of its employees. It should be ordered to make whole those employees who have suffered discrimination at its hands and take the other steps outlined in the Remedy section below.

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II

STATEMENT OF FACTS

A. TESLA WORKERS LAUNCH THEIR UNION ORGANIZING DRIVE IN THE SUMMER OF 2016

In the Summer of 2016, Tesla production employees working at the Company's electric car manufacturing facility in Fremont, California reached out to the UAW in the hope of improving their working conditions through unionization. (Tr. 47, 673-76)¹ Tesla employee José Moran² met with two representatives from the UAW, Susan Reed and Jorge Fernandez, to discuss how a union could benefit Tesla workers and help address frequent employee concerns, such as long hours, lack of safety, preventable injuries, favoritism in promotion, and inadequate compensation. (Tr. 46, 673-674; GCX 8) While Moran was proud to assemble the most innovative and environmentally friendly cars in the world, he was frustrated the Company did not treat its employees with the same respect. (Tr. 337, 687-88; GCX 8)

Excited about an avenue to address employees' concerns, Moran created a private Facebook group called "Tesla employees for UAW Representation," where Tesla hourly employees could discuss working conditions.³ (Tr. 675) In August 2016, Moran invited his co-workers to join him in establishing the Volunteer Organizing Committee, or "VOC," a committee of workers at the Tesla Fremont facility who volunteer to lead the organizing effort to bring union representation to Tesla. (Tr. 47, 431-433, 676-77) Tesla Employees Richard Ortiz⁴ and Michael Sanchez⁵ also joined the VOC in the Summer of 2016. (Tr. 87, 432)

¹ All references to the transcript herein are indicated by (Tr. ____). All references to Joint Exhibits, General Counsel Exhibits, Respondent Exhibits and Charging Party Exhibits are indicated by (JX ____), (GCX ____), (RX ____), and (CPX ____), respectively.

² Moran is an hourly production associate at Tesla's Fremont facility. (Tr. 668) Employed by Tesla since 2012, Moran's current position is quality lead inspector, where he performs ultrasound testing on spot welds on the frame of the underbody in Body and White at the beginning of the car building process. (Tr. 668, 669-70)

³ The group is still active and private. (Tr. 675)

⁴ Ortiz was an hourly production associate at Tesla's Fremont facility, first as a temporary employee beginning in December 2015, then as a direct employee of Tesla from October 2016 until his termination on or around October 18, 2017. (Tr. 424-25) Before Ortiz's injury in mid-February 2017, he worked in the Closures area of Body and White 2, where he prepared

1 In or around August 2016, Moran and the VOC met offsite to select a campaign slogan
2 and logo. (Tr. 677-78) The workers chose "Driving a Fair Future at Tesla" as the campaign
3 slogan (GCX 35) and an official logo that contained a black car, a red lightning bolt through the
4 middle of the car to represent electricity, with a small UAW emblem on the southeast corner of
5 the vehicle. (GCX 35) The workers also launched a public website for the organizing campaign,
6 www.fairfuture@tesla.org (Tr. 679; GCX 39), and a public Facebook page, "Fair Future at
7 Tesla." (Tr. 47-48, 680; GCX 40).

8 **B. TESLA ISSUES AND COMPELS EMPLOYEES TO SIGN AN AGREEMENT**
9 **PROHIBITING EMPLOYEES FROM DISCUSSING WORKING CONDITIONS**

10 In October 2016, Tesla issued a new "Confidentiality Acknowledgement," which
11 (1) declared all "information about...employees" to be confidential information, (2) banned
12 writing about such confidential information or discussing it with anyone outside Tesla, and
13 (3) prohibited Tesla employees from communicating to the media "about Tesla," without
14 limitation:

15 These obligations are straightforward. Provided that it's not already public
16 information, *everything that you work on, learn about or observe in your work*
17 *about Tesla is confidential information* under the agreement that you signed
18 when you first started. This includes information about products and features,
19 pricing, customers, suppliers, employees, financial information, and anything
20 similar. Additionally, regardless of whether information has already been made
21 public, *it is never OK to communicate with the media or someone closely related*
22 *to the media about Tesla, unless you have been specifically authorized in*
23 *writing to do so.*

24 *Unless otherwise allowed by law or you have received written approval, you*
25 *must not, for example, discuss confidential information with anyone outside of*
26 *Tesla, take or post photos or make video or audio recordings inside Tesla*
27 *facilities, forward work emails outside of Tesla or to a personal email account,*
28 *or write about your work in any social media, blog, or book. If you are unsure,*
check with your manager, HR, or Legal. Of course, these obligations are not
intended to limit proper communications with government agencies.

24 //

25
26 components that went into building the doors, hood, and fenders of the Tesla Model X. (Tr. 426-
27 27) He returned to this position in mid-July 2017. (Tr. 428-29)

28 ⁵ Sanchez has been an hourly production associate at Tesla since 2012. (Tr. 75) Sanchez's
most recent position was in General Assembly, Chassis 3, where he worked on the underbody of
the car near the end of the line. (Tr. 76-77)

1 The Acknowledgement further stated that a violation of the policy could lead to loss of
2 employment and possible criminal prosecution.

3 ***The consequence for careless violation of the confidentiality agreement, could***
4 ***include, depending on severity, loss of employment. Anyone engaging in***
5 ***intentional violation of the confidentiality agreement will be held liable for all***
6 ***the harm and damage that is caused to the company, with possible criminal***
7 ***prosecution. These obligations remain in place even if no longer working at***
8 ***Tesla.***

9 Finally, the Acknowledgement required employees to reveal whether they had disclosed
10 "any Tesla confidential information outside of Tesla" in the past 12 months:

11 By acknowledging, I affirm my agreement to comply with my confidentiality
12 obligations to Tesla. ***I also represent that at no time over the past 12 months***
13 ***have I disclosed any Tesla confidential information outside of Tesla unless***
14 ***properly authorized to do so.***

15 (GCX 31-003; emphasis added)

16 During October and November 2016, Tesla required employees to sign the
17 Confidentiality Acknowledgement multiple times. (Tr. 835) Tesla asked employee Jonathan
18 Galescu to sign the policy first physically, then electronically, and blocked him from taking a
19 photograph of the physical Acknowledgement.⁶ (Tr. 835-839; GCX 31-003) Respondent Tesla
20 also compelled Moran and Ortiz to sign the Confidentiality Acknowledgement. (Tr. 449, 684)
21 Tesla issued three different versions of the Acknowledgement during this period, but never
22 altered the language described above.⁷ (RX 11, RX 12, RX 14)

23 ⁶ Galescu physically signed the Confidentiality Acknowledgement in the presence of
24 Tesla Human Resources representative David Zweig. (Tr. 835; GCX 31-003) When Galescu
25 attempted to take a photograph of the agreement he had just signed for his records, Zweig
26 stopped Galescu, stating that he wasn't allowed to take a photo of it and Tesla would upload the
27 document to his Workday account once it was ready. (Tr. 837) No production materials or
28 equipment would have been visible in the photograph Galescu attempted to take. (Tr. 838-39)

Tesla did not offer any evidence to contradict Galescu. Zweig did not testify at the
hearing.

⁷ Human Resources Director Josh Hedges testified that he held a meeting on October 9,
2016, at the direction of former Vice President of Human Resources Mark Lipscomb, with the
HR representatives for all his departments and asked them to obtain signatures from all
employees on the Confidentiality Acknowledgement. (Tr. 1162, 1165, 2075-76, RX 11) On
October 11, 2016, Lipscomb directed HR staff to use an updated version of the confidentiality
policy. (RX 12, Tr. 1169) Then on November 2, 2016, Lipscomb instructed HR staff to have
employees electronically sign the Confidentiality Acknowledgment in Workday, because getting
physical signatures was too burdensome. (Tr. 1171-72, 2085; RX 13, RX 14)

1 According to Tesla witness Jonathan Cheng, the purpose of the Confidentiality
2 Acknowledgement was to "remind" employees what their obligations were in easily
3 understandable language. (Tr. 2028, 2056) Cheng testified he relied on the Proprietary
4 Information and Inventions Agreement ("PIIA") when drafting the Acknowledgement, although
5 the PIIA does not contain language regarding employees similar to the Confidentiality
6 Acknowledgement. (RX 4, GCX 31-003, Tr. 2023, 2025, 2055) Hedges testified that all
7 employees who come to work at Tesla are required to sign the PIIA, including those hired prior
8 to 2016. (Tr. 1117; RX 4)⁸

9 Concerned about the Acknowledgement, five members of the California State Legislature
10 sent a public letter to Tesla CEO Elon Musk on January 10, 2017, questioning whether the
11 Company's new confidentiality policy restricted employees' right to communicate to each other
12 and the public about working conditions. (GCX 8-002)

13 **C. IN FEBRUARY OF 2017, TESLA EMPLOYEES PUBLICLY LAUNCH THE**
14 **UNION CAMPAIGN AND FACE IMMEDIATE HARASSMENT FROM TESLA**

15 Tesla hourly production employees continued to meet and speak with each other privately
16 about bringing union representation to Tesla until February 2017, when employee José Moran
17 took a bold step forward. (Tr. 48) On February 9, 2017, Moran posted a blog article to the
18 website Medium.com, titled "Time for Tesla to Listen," in which he became the first Tesla
19 employee to publicly call for a union at Tesla. (GCX 8; Tr. 48, 687-88)

20 In this article, Moran stated he was proud to be building the car of the future and believed
21 in the Company's vision, but thought the Company could do better. (GCX 8) He described how
22 preventable injuries happen too often at the plant, noting an instance a few months earlier when
23 six of the eight members of his work team were out on medical leave. (GCX 8) He explained

24
25 ⁸ Cheng testified that the triggering event for drafting the Confidentiality
26 Acknowledgement was an email from Tesla CEO Musk to all Tesla employees that leaked to the
27 press. (Tr. 2008-09, RX 37) In the leaked email, which appeared in its entirety in a Bloomberg
28 news article, Musk revealed nonpublic financial and production numbers to Tesla's employees.
(Tr. 2009-10) Musk may have publicly tweeted the same information the same day. (Tr. 2053)

Cheng did not explain why this event necessitated the new confidentiality policy clauses
related to working conditions.

1 how mandatory overtime and 60-70 hour work weeks have left workers exhausted. (GCX 8) He
2 also pointed out that production workers earn between \$17.00 and \$21.00 per hour, when the
3 average auto worker nationally earns \$25.58 an hour and a living wage in Alameda County is
4 \$28.00 an hour. (GCX 8)

5 Moran asked Musk to be "a champion for his employees," just as he is already a
6 "respected champion for green energy and innovation." (GCX 8) Moran concluded his article by
7 requesting a "productive conversation about building a fair future for all who work at Tesla."
8 (GCX 8)

9 Tesla's reaction was as swift as it was negative. On the same day that Moran published
10 his article, Musk stated Moran "doesn't really work for us," causing confusion among Tesla
11 employees, and called his desire for improving working conditions through union representation
12 "morally outrageous." (CPX 8C, GCX 59) Further, as described in detail below, the Company
13 immediately harassed workers who attempted to share Moran's article at the Fremont facility.
14 (Tr. 96, 99, 101, 457, 702-03, 1734)

15 To coincide with the release of Moran's article, Tesla employees and the UAW created a
16 one-page flyer (the "Time For Tesla To Listen" flyer) that contained Moran's article on one side
17 and the January 10, 2017 letter from California lawmakers on the other side. (GCX 8) Moran,
18 Ortiz, Sanchez, and other Tesla Employees planned to hand out this flyer to co-workers on
19 February 10, 2017 while standing at the entrances to the Fremont facility during shift changes.
20 (Tr. 90-94, 454-55, 692-93) However, when the employees attempted to spread Moran's message
21 to coworkers that morning, Tesla security guards immediately and repeatedly sought to stop
22 them, intimidate them, and eject them from the property.

23 Early that morning, Sanchez parked his car near the entrance referred to as "Door 2"
24 (GCX 4) and began handing out the Time For Tesla To Listen flyer to co-workers entering and
25 exiting the building. (Tr. 92, 94) Not long after, a young male Latino Tesla security guard
26 approached Sanchez and asked him if he was a Tesla employee. (Tr. 95-96) After Sanchez
27 replied "yes," the security guard nonetheless told Sanchez he should "leave the premises." (Tr.
28 96) A short while later, the same guard came back and aggressively asked to see Sanchez's

1 badge. (Tr. 97-98) Sanchez handed the guard his badge and the guard took a picture of the badge
2 with his cell phone. (Tr. 98) The guard then handed the badge back to Sanchez and again told
3 him to leave the premises. (Tr. 99)

4 Next, an older male Middle Eastern Tesla security guard approached Sanchez as he was
5 preparing to leave Door 2 and walk to Door 1. (Tr. 100; GCX 3, 4) After the guard discovered
6 Sanchez was handing out flyers supporting unionization, he stated "unions are worthless, you
7 shouldn't join one." (Tr. 101) This guard then also asked for Sanchez's badge and, after Sanchez
8 complied, also took a picture of the badge. (Tr. 102) After this interaction, the older male guard
9 followed Sanchez while he walked toward Door 1. (Tr. 102, GCX 3)

10 Sanchez then joined Ortiz and Moran, who had parked near Door 1 (GCX 3) of the
11 Fremont facility around 4:30 a.m. and were handing out the flyers to employees entering and
12 exiting Door 1. (JX 3; Tr. 452, 454-55, 692-93) At approximately 4:45 a.m., a female security
13 guard came out of Door 1 and scolded Ortiz, Moran, and Ortiz for distributing leaflets. (Tr. 457,
14 702) The security guard told the employees they needed to leave the Fremont facility. (Tr. 110,
15 457, 703)

16 In a second encounter with security at Door 1, a male security guard approached the
17 employees, asked for their badges, and took a picture. (Tr. 112-113, 465-466, 699-700, 1720; RX
18 35) During this encounter, both Sanchez and Moran testified that a male security guard told them
19 to leave the premises. (Tr. 112, 699)

20 Tesla witness David Rios, a security guard employed by Telsa, testified that on February
21 10, 2017 he went to Door 2 at around 4:23 a.m. for reasons he can't recall (Tr. 1745-46) after
22 Security Guard Natalie Hunter called the control room (Tr. 1699, RX 22) to report that people
23 were passing out flyers. (Tr. 1749) Upon reaching an area near Door 2 (Tr. 1708), Rios saw
24 Tesla Guard Sam Noakes speaking with an unidentified man (Tr. 1701) and overheard Noakes
25 tell the unidentified man "the unions were no good, and the unions did not do anything for him."
26 (Tr. 1704)

27 Upon approaching the man, Rios testified "he handed me a flyer and asked me if I was
28 being treated fairly by Tesla." (Tr. 1710) Rios identified the Time to For Tesla to Listen Flyer,

1 GCX 8, as the document he was handed. (Tr. 1710) After reading the document, Rios recognized
2 that it had something to do with a union (Tr. 1711, 1735) and asked the man if he had written the
3 document. (Tr. 1711) The man replied he had not, but the man who did was at Door 1. (Tr. 1711)

4 Rios then called Greg Slettvett, the Head of Security at Tesla in order to "let him know
5 what's going on" and to find out "what to do." (Tr. 1713) Slettvett instructed Rios to "find out if
6 they were employees" and "document everything." (Tr. 1715)

7 Rios testified that he followed the man handing out the Time For Tesla To Listen Flyers
8 to Door 1. (Tr. 1749) At Door 1, Rios testified he stated to the unidentified man and two other
9 individuals that "if they weren't employees, that they'd be asked to leave, but if they were
10 employees, to show me their badges." (Tr. 1718) Rios testified that the men provided their
11 badges to Rios cooperatively, (Tr. 1719, 1750) and Rios took a picture of each badge, because
12 Slettvett told him to document everything. (Tr. 1720)

13 Rios testified he followed the leafletter to Door 1 because he wanted to gather
14 information for Slettvett about the individual who wrote the flyers. (Tr. 1749) Rios later emailed
15 the names and a short report of what happened to Mr. Slettvett at 6:52 a.m (RX 34) because
16 Slettvett asked him to document everything regarding the flyering situation. (Tr. 1734) He also
17 emailed the photographs of the badges to Slettvett and Jeremie Hansen at 12:37 p.m, because
18 Slettvett specifically asked for the photos to be sent to him. (RX 35, 1751) Slettvett did not
19 testify at the hearing.

20 Later that same morning, while Sanchez distributed flyers at Door 3 (GCX 6), a different
21 female Tesla security guard approached Sanchez and told Sanchez to leave the premises. (Tr.
22 122)

23 Finally while Sanchez was handing out flyers at the back entrance to the Fremont facility,
24 a supervisor emerged from inside the facility and asked "Are you José Moran?" After Sanchez
25 replied "No, I'm not, but I am with him," the supervisor replied, "you need to leave the premises
26 now." (Tr. 127) The supervisor then pulled out his phone, put it close to Sanchez's face, and
27 dialed a phone number, at which point a female voice then said "Hello, Sanchez" and "I see that
28 you're on leave of absence. I see that you got injured. You should be home resting." When

1 Sanchez replied that he was within his legal rights to be there and was not going against his
2 restrictions, she replied, "You should go home and rest. Can you please leave the premises?" (Tr.
3 129) After being told to leave the premises by no less than six different Tesla personnel over the
4 course of the morning, Sanchez finally left. (Tr. 129)

5 **D. TESLA ATTEMPTS TO BAN ALL UNION MATERIAL FROM THE FREMONT**
6 **FACILITY**

7 After the launch of Moran's article, Tesla employees continued to distribute union
8 materials to co-workers inside and outside of the plant during non-work time. (Tr. 842) These
9 materials included union business cards, union flyers, and union stickers. (GCX 8, 33, 35; Tr. 49,
10 62, 842) However, the workers' actions soon drew a blunt response from Tesla: a prohibition on
11 the distribution of any stickers, pamphlets, and leaflets at the plant that were not approved by
12 Tesla leadership. (Tr. 844, 1064-65)

13 On March 23, 2017, Galescu attended a daily pre-shift meeting along with about thirty
14 co-workers led by his Supervisor Armando Rodriguez. (Tr. 844, 1064-65) At this meeting,
15 Rodriguez announced that passing out stickers, pamphlets, and leaflets that were not approved by
16 Tesla management would now be grounds for discipline and/or termination. (Tr. 844)⁹

17 **E. TESLA UNLAWFULLY THREATENS NEGATIVE CONSEQUENCES FOR**
18 **EMPLOYEES WHO WEAR UNION STICKERS**

19 In the Spring of 2017, Tesla Supervisor Arnold Camat warned employee Eric Vazquez of
20 negative consequences for wearing a union sticker at the Fremont facility. Vazquez, who worked
21 in the Stamping department, wore a union sticker on his hat in the Spring of 2017. (Tr. 352;
22 GCX 35) Vazquez testified that on one day, as he was clocking out to go home, Camat told him,
23 "Watch out with that sticker. They're watching people with that sticker on." Camat went on to
24 tell him "make sure you're on point with everything." (Tr. 354-55) Camat denied making this
25 statement in his testimony. (Tr. 2118)

26
27 ⁹ In his testimony, Rodriguez admitted giving a speech to his employees on March 23,
28 2017 that included reference to "literature that's not Tesla approved." (Tr. 2138) Rodriguez
however claimed the prohibition he announced applied only to union stickers defacing company
property. (Tr. 2148)

1 **F. TESLA EMPLOYEES FACE MORE INTIMIDATION, HARASSMENT, AND**
2 **INTERROGATIONS WHEN THEY SPEAK OUT ABOUT SAFETY PROBLEMS**

3 From the beginning of the union organizing campaign, one of the employees' major
4 concerns was the health and safety of employees working at the Fremont facility. (Tr. 47)
5 Employees felt that preventable workplace injuries were too common and that Tesla wasn't
6 listening to constructive input that could reduce repetitive stress injuries. (GCX 8)
7 Many employees with past experience at other car manufacturers, such as Moran and Ortiz,¹⁰
8 knew first-hand that safer practices existed. However, when the workers collectively raised these
9 issues to co-workers and management, Tesla again reacted harshly.

10 **1. Tesla Employees Request Tesla's Complete OSHA Logs, Only To Face**
11 **Opposition and Intimidation**

12 After witnessing so many preventable injuries, Ortiz and Galescu decided to request
13 Tesla's OSHA 300 Logs in April 2017. (Tr. 846, 1037) Federal and State law require employers
14 to keep OSHA 300 logs recording all sicknesses and injuries that happen at the workplace and
15 OSHA 300 Summaries listing the employee, incident, and location of each injury or sickness at
16 the workplace. (Tr. 845; 29 U.S.C. §657; Cal. Labor Code § 6300, *et seq.*) Ortiz's and Galescu's
17 hope was that a representative working on their behalf could analyze the logs in order to help
18 raise awareness of, and solve, the high injury rate at Tesla. (Tr. 846, 1037)¹¹

19 On April 4, 2017, Galescu and Ortiz requested the CalOSHA 300 logs and summaries in
20 an email to Tesla Human Resources. (GCX 16, Tr. 469, 845) On April 5, 2017, Tesla Human
21 Resources representative David Zweig replied and provided the documents, but they contained
22 redactions, with "confidential" stamped on every page. (GCX 17, GCX 18; Tr. 470-71, 847-48)
23 Having signed Tesla's strict confidentiality agreement, the "confidential" stamp concerned and
24 confused Galescu and Ortiz, because they needed to share the documents with co-workers,

25
26 ¹⁰ Both Moran and Ortiz previously worked at NUMMI, a joint venture between General
Motors and Nissan that manufactured vehicles at the Fremont facility until 2010. (Tr. 425, 673)

27 ¹¹ Ortiz and Galescu also filed a Workplace Safety Complaint with State of California
28 Department of Industrial Relations CalOSHA to address these workplace safety and health
hazards. CalOSHA dismissed the complaint on the basis of Tesla's compliance because it had
cured its violations at the time of its investigation.

1 former co-workers, and authorized representatives to understand the information. (GCX 20)

2 They also felt that the redactions left the documents incomplete and impaired their and their co-
3 workers' ability to analyze and eliminate workplace safety hazards. (GCX 20)

4 Therefore, on April 13, 2017, Galescu and Ortiz replied to Zweig, asking for copies of
5 the documents without redactions or the "confidential" stamp. (GCX 20; Tr. 472, 851) On April
6 14, 2017, Seth Woody, Director of Environmental Health and Safety at Tesla, wrote back
7 refusing to provide the requested information, stating such information was private and
8 expressing concern the employees would share the documents with unauthorized individuals "or
9 organizations." (GCX 21, Tr. 473-74, 852) Woody's email did not confirm that Tesla would
10 respect the employees' right to share the documents with their chosen representative. (GCX 21)

11 On April 21, 2017, Galescu and Ortiz replied that they "continue to be concerned that the
12 confidential watermark will discourage my co-workers from sharing the documents with current
13 employees, former employees, and their authorized representatives." (GCX 22, Tr. 474, 852-53)
14 They further asked for an explanation of the legal basis supporting Tesla's decision to release
15 only redacted documents. (GCX 22)

16 On April 28, 2017, twenty-four days after the initial request, Woody finally provided
17 unredacted documents without a "confidential" stamp, stating he was doing so only because of
18 the employees' "insistence." (GCX 23, Tr. 475, 855) However, Woody reiterated his privacy
19 concerns and reminded the employees that they may only share the documents with current or
20 former employees and authorized representatives. (GCX 23) After receiving the OSHA Logs,
21 Galescu provided the Logs to his representatives, Susie Reed of the UAW and Doug Parker of
22 Worksafe.¹² (GCX 24; Tr. 862, 1057)

23 On May 2, 2017, Tesla Human Resources sent an email to all production employees,
24 alerting them that "one of our employees" had requested the OSHA 300 Logs. (RX 2) The email
25 went on to say: "We wanted to provide advance notice to employees, as we believe this request

26
27 ¹² Worksafe is a California non-profit organization that specializes in workplace health
28 and safety issues. (GCX 9-001) Worksafe created the report on behalf of Ortiz and Galescu
based on the OSHA Logs they obtained so that they could better understand the reality of their
working conditions at Tesla. (GCX 9-001, 24; Tr. 862, 1057) This report did not contain any
confidential employee information, nor did it link specific injuries to particular employees.

1 is intended to ultimately make this information public despite our efforts to protect your
2 privacy." ¹³ (RX 2)

3 **2. Tesla Employees Distribute Flyers Discussing Safety Problems Found in the**
4 **OSHA Logs, Only To Be Harassed Again by Tesla Security Guards**

5 On May 24, 2017, Galescu and Ortiz's representative, Worksafe, released a report on
6 work-related injuries at the Tesla Fremont facility. (GCX 9-001) This report revealed that the
7 injury rate at Tesla's Fremont Facility was 31% higher than the industry average in 2015, while
8 significant injuries – those that result in days away from work, restricted duty, or a job transfer –
9 were double the industry average in 2015. (GCX 9-001) In conjunction with the release of this
10 report, Tesla employees and the UAW prepared a one-page flyer (the "Safety flyer"), which
11 summarized Worksafe's findings on one side and profiled a Tesla employee whose injuries had
12 been misreported by Tesla in the OSHA Logs on the other side. (GCX 9-002) Tesla employees
13 distributed the Safety flyer to co-workers on May 24, 2017 outside the plant, and inside the plant
14 in non-work areas. (Tr. 399-411, 478-79, 856)

15 Their efforts only produced more harassment from Tesla security. In the early morning of
16 May 24, 2017, Tesla employee Branton Phillips picked up copies of the Safety Flyer from the
17 Union's office and drove to the Fremont facility to distribute the flyers before his 6:00 a.m. shift.
18 (Tr. 390-92; GCX 9) In order to prevent any confusion with Tesla security, Phillips first entered
19 the building through Door 3, using his employee ID badge, and informed the female security
20 guard, who was sitting at the security podium in front of Door 3, that he would be distributing
21 flyers to Tesla employees outside Door 3. (Tr. 395-97) The security guard, however, responded
22 "no, you can't do that." (Tr. 398)

23 Later, after Phillips had been distributing the flyer for about ten minutes outside of Door
24 3, a male security guard approached him and warned him to leave the premises immediately or
25 he would be fired. (Tr. 399-401) After Phillips replied that he was allowed to distribute his flyers
26 there, the guard asked Phillips for his employee ID badge. (Tr. 402) At this point, a second
27

28 ¹³ Tesla misrepresented the situation: CalOSHA Logs and summaries do not contain any
private medical information of any employee.

1 security guard approached Phillips, and the first security guard repeated his command to leave
2 the premises. (Tr. 403)

3 A third security guard then approached Phillips, and the three guards enclosed Phillips by
4 positioning themselves in a 10:00, 12:00, and 2:00 formation, a position, in front of Phillips (Tr.
5 405, 409) Finally, after what seemed like a long time to Phillips, a fourth security guard arrived
6 in a Tesla security vehicle and told the guards to leave Phillips alone. (Tr. 410-411)

7 **3. Tesla Interrogates Ortiz and Galescu Regarding the OSHA Logs On the**
8 **Same Day Employees Distribute Flyers Discussing Safety Problems Found in**
9 **the OSHA Logs**

10 Tesla witness Felipe De La Cruz testified that his superior Greg Slettvett, the Director of
11 Security at Tesla, was interested in monitoring union activity at the Tesla Fremont facility. (Tr.
12 2459-60, 2471) De La Cruz further testified it was Tesla's policy to document every instance of
13 individuals leafleting on behalf of the Union.¹⁴ (Tr. 2461)

14 On the morning of May 24, 2017, shortly after Phillips and other co-workers began
15 distributing the Safety flyer to employees, members of Tesla management obtained the flyer and
16 circulated it among themselves.¹⁵ (GCX 53; Tr. 2368) Human Resources Director Josh Hedges
17 then orally directed Liza Lipson, a Tesla Human Resources business partner, to interview Ortiz
18 and Galescu. (Tr. 2362-63)

19 //

20 //

21 //

22 //

23 _____
24 ¹⁴ De La Cruz testified that he received email instructions from Slettvett prior to May 24,
25 2017 regarding what to do if union leafleting occurs. (Tr. 2464) Tesla did not produce this email
26 or place it into the record. Singh testified that he received instructions from Sam Ali, a Tesla
Security guard employed by Securitas, regarding what to do if union leafleting occurs. (Tr. 2479)
Neither Slettvett nor Ali testified during the hearing.

27 ¹⁵ Tori Tanaka, a Tesla Human Resources Partner, alerted Liza Lipson, Tanaka's
28 supervisor, at 6:26 a.m. on May 24, 2017 that employees, including Phillips, were distributing
the Safety flyer to employees at the entrances to the facility. (GCX 53; Tr. 2368) The subject of
her email was "Union activity this AM" and she attached a picture of the Safety flyer as a PDF to
her email. (GCX 53)

1 That afternoon, Lipson and Lauren Holcomb, an environmental health, safety and
2 sustainability specialist at Tesla, called Galescu and then Ortiz into separate private meetings to
3 discuss the OSHA Logs.¹⁶ (Tr. 482, 857, GCX 24)

4 Lipson was aware that Ortiz and Galescu could lawfully share the logs with their personal
5 representative, but did not mention this during the interviews. (Tr. 2381-82) Lipson testified that
6 a complaint did not prompt the May 24, 2017 meetings, and that she did not know whether actual
7 personal medical information had been shared. (Tr. 2376-77) Lipson admitted that one of
8 purposes for her interrogation of Galescu and Ortiz was to find out whether Ortiz had shared the
9 logs with other employees. (Tr. 2376-77)

10 At the meeting with Galescu, Lipson asked Galescu a series of questions about the OSHA
11 300 logs, including "Did you provide the logs to others?" and "To whom did you provide them?"
12 (Tr. 857, 2354, GCX 91) Galescu did not, in fact, have access to any such data; he only had the
13 logs and summaries that were provided by Tesla. He informed Lipson of this, denied accessing
14 the logs other than through the email sent by the Employer, and then refused to answer any more
15 questions without his representative present. (Tr. 858-59, GCX 91)

16 Lipson then met with Ortiz. To get Ortiz to meet with her, Lipson lied about the purpose
17 of the meeting by telling him that she wanted to discuss his performance at the traffic
18 intersection. (Tr. 482) When the meeting actually began, after a very brief discussion of Ortiz's
19 job performance, Lipson turned to the topic that interested her most, asking Ortiz a series of
20 questions about whether he had shared the OSHA 300 logs and 300-A summaries with other
21 employees or with people outside of Tesla and whether he had posted them online. (Tr. 484)

22 Ortiz explained that his tech skills were very low, then replied "You're asking me if I
23 hacked into a system. I did not." (Tr. 485) Lipson then asked whether Ortiz knew what Galescu
24 did with the OSHA 300 Logs, and Ortiz replied that he could not answer to what Galescu did
25 with them outside his presence. (Tr. 486) Realizing that the motivation behind her meeting with

26 //

27
28 ¹⁶ Galescu and Ortiz also distributed copies of the Safety flyer to Tesla employees on
May 24, 2017 at the Fremont facility before their afternoon shifts began. (Tr. 478-79, 856; GCX
9)

1 him was only to find out about his protected activities, and not his work performance, Ortiz
2 ended the meeting.

3 On June 6, 2017, Galescu and Ortiz sent an email to Lipson and Holcomb to clarify that
4 Susan Reed of UAW and Doug Parker of Worksafe were their representatives regarding the
5 OSHA 300 Logs. (GCX 24; Tr. 477, 862)

6 **4. In Response to Employee Safety Concerns, Musk and His Chief People**
7 **Officer Attempt to Block Employees from Advocating for a Union**

8 Following the release of the Worksafe report, Tesla employees in June 2017 petitioned
9 Tesla Management directly with their safety concerns. That drew a direct response from Musk.

10 The petition, signed by numerous employees including Ortiz and Moran, asked Tesla
11 management to "work together" with employees for a "fair, safe, and secure work place" so that
12 workers would not be afraid to report injuries and other safety concerns.¹⁷ (GCX 27; Tr. 487,
13 704-05) On or about June 6, 2017, Moran and other employees on the Volunteer Organizing
14 Committee delivered the petition in person to Hedges. (Tr. 705) After delivering the petition in
15 person, Moran also e-mailed the petition to Hedges and Musk on June 6, 2017. (GCX 29; Tr.
16 706-07)

17 A day after emailing the health and safety petition to Hedges, Hedges notified Moran on
18 June 7, 2017 that he wanted to speak with him. (Tr. 712) Uncomfortable meeting with Hedges
19 alone, Moran brought Tony Vega, a fellow hourly production associate at Tesla, with him to the
20 meeting. (Tr. 713)

21 At the meeting, Hedges informed Moran that the meeting was not actually with him, but
22 instead with Tesla CEO Elon Musk.¹⁸ (Tr. 714) Moran, Vega and Hedges walked to another
23 conference room where Musk and Gaby Toledano,¹⁹ Tesla's Chief People Officer, were waiting
24 for Moran. (Tr. 714, 878)

25
26 ¹⁷ Ortiz and Moran led a drive to collect signatures on this petition at the beginning of the
27 Spring of 2017. (GCX 27; Tr. 487, 704-05)

28 ¹⁸ The meeting on June 7, 2017 was Moran's first and only meeting with Musk. (Tr. 719-
20)

1 After introductions, Moran and Vega, still unsure of the purpose of the meeting, began
2 explaining their concerns with safety and performance reviews, including a request for
3 ventilation masks while welding, the weight of battery packs, the impact of 12-hour shifts, and
4 the need for transparency in the "leveling up" of employees.²⁰ (Tr. 416) At this point Moran's and
5 Toledano's accounts of what was said at this meeting diverge sharply, as Toledano denies that
6 the subject of the union ever came up at this meeting. (Tr. 910)

7 Moran, by contrast, remembers that it came up repeatedly and Musk was vocal on the
8 subject. As Moran testified, he stated that these concerns about safety, working conditions and
9 other terms and conditions of employment led him and many others to want to form a union "to
10 have a voice in the plant." (Tr. 417) Musk and Toledano were not, to put it mildly, receptive to
11 Moran's request for a union; Musk responded that with a union "you don't really have a voice.
12 The UAW is a second—like two-class system where UAW is the only one that has a voice and
13 not the workers."²¹ (Tr. 717)

14 According to Moran, Toledano then said, "the majority of the workers at Tesla don't want
15 a union" and rhetorically asked why workers would want to pay union dues. (Tr. 717-18) Moran
16 nonetheless reiterated his support for a union, replying to Musk and Toledano, "we [workers]
17 have every right to form a union. We do want a voice to work together with the Company to
18 improve working conditions." (Tr. 718)

19 As a next step, Toledano invited Moran and Vega to participate in Safety Committee
20 meetings, to which Moran and Vega were receptive. (Tr. 718-19, 910-12) Musk then concluded
21 the meeting by stating, "if these Safety Committee meetings don't work out, then we'll give you
22 your union." (Tr. 719)

23
24 ¹⁹ Toledano was the highest ranking person in the area of Human Relations, in charge of
25 approximately 40,000 employees, including the head of the Environmental Health and Safety
26 Department, the head of the Facilities department, the head of HR Solutions, the head of
27 Recruiting, and responsible for the Security Department, including both the persons directly
28 employed by Tesla as security guards and those contracted to work as security guards, and the
head of Employee Relations and Investigations. (TR 877-83).

²⁰ "Leveling up" is a wage raise. (Tr. 721)

²¹ Musk would later use similar language in a Tweet on May 22, 2018 (GCX 69-2)

1 In a string of emails on June 12 and 13, 2017, Toledano and Musk discussed the true
2 reason for both the June 7, 2017 meeting and the invitation to Moran and Vega to participate in
3 the Safety Committee. (GCX 52-001) At 9:41 p.m. on June 12, 2017, Toledano emailed Musk:

4 I have to say, this is a super smart idea to have these two on the safety team full time. If
5 that's what you mean - they would join Seth's team and work on safety in the factory full
6 time on behalf of all associates (vs work to pull in the UAW)? Amazing way to turn
adversaries into those responsible for the problem.

7 (GCX 52-001) At 10:53 p.m. Musk responded "exactly." (GCX 52-001)

8 On June 13, 2017 at 8:13 p.m., Toledano responded to Musk, first discussing how Moran,
9 Vega, Galescu, and "Victor" Ortiz were all "pro-union," then stating:

10 Clearly we could ask all 4 to join Seth's team and go salaried. I am confirming now with
11 Legal that if they join the Safety team then they would then be considered part of
12 management and not eligible to advocate for a union should they accept these roles. I will
confirm when I get this answer.

13 (GCX 52-001; Tr. 912, 919)

14 Moran attended between two and four Safety Committee meetings, but continued
15 advocating for a union at Tesla during this time. (GCX 55; Tr. 720) Management then stopped
16 inviting Moran to the meetings. (Tr. 720) Contrary to Musk's and Toledano's promise, Tesla
17 safety representatives did not listen or take action on the employees' safety concerns.²²

18 In July 2017, Ortiz, Galescu, Phillips, and other employees on the VOC delivered another
19 petition to Hedges, titled "We Want to Know." (GCX 45; Tr. 488) This petition, signed by
20 numerous workers including Ortiz, asked Tesla management for clarity regarding the criteria for
21 reviews, wage increases, and promotions, in addition to reiterating employees' desire for a union
22 contract. (GCX 26; Tr. 488) Ten members of the VOC posted a picture outside of the Fremont
23 facility informing other workers interested in the "Fair Future At Tesla" campaign that the
24 petition had been delivered. (GCX 45) Phillips also emailed the same petition to Musk,

25
26 ²² Toledano could not remember, for example, whether any of employees' safety
27 concerns, such as purchasing personal protective equipment which Moran and others raised
28 during the June 7 meeting, were pursued. Toledano presumably would have known if any action
had been taken, since she was responsible, along with Seth Woody, for responding to employees'
safety concerns expressed in the petition. (Tr. 937)

1 Toledano, and Hedges, in the evening of July 20, 2017, and cc'ed Ortiz and several other
2 employees. (GCX 70)

3 **G. AFTER INCREASING NUMBERS OF TESLA EMPLOYEES BEGIN WEARING**
4 **UAW T-SHIRTS TO WORK, TESLA STARTS ENFORCING A RESTRICTIVE**
5 **UNIFORM POLICY**

6 As part of the Union organizing campaign, Tesla employees, including Ortiz, distributed
7 over 400 UAW T-shirts to their fellow employees. (Tr. 50, 187, 534) These black cotton T-shirts
8 had a small "Driving A Fair Future at Tesla" union insignia on the front and a larger, different
9 "Driving A Fair Future at Tesla" insignia that included "UAW" in large print on the back. (Tr.
10 181, GCX 25, 34) Numerous Tesla employees, including Ortiz, Moran, Eric Vasquez, Jayson
11 Henry, and Mike Williams, wore the UAW T-shirts while working at the Fremont facility. (Tr.
12 181, 224, 260, 368, 534, 759)

13 Tesla responded by beginning in August 2017 to enforce a uniform policy that prohibited
14 employees from wearing UAW shirts in General Assembly, a department containing
15 approximately 3,000 employees. (Tr. 184-85, 293, 297-98, 325, 330, 1116, 2545, 2553; GCX 73)
16 This policy, dubbed "Team Wear," required employees to wear Tesla-issued shirts and pants
17 while working. (Tr. 1370; GCX 41, 92) Employees out of compliance with this Team Wear
18 policy could receive a coaching or be sent home, losing a day of pay. (Tr. 184, 297-98, 330,
19 1397)

20 Tesla employees Jayson Henry, Sean Jones, and Tim Cotton all worked in General
21 Assembly. (Tr. 180, 291, 322) Before August 10, 2017, Henry, Jones, and Cotton all wore non-
22 Tesla T-shirts with pictures or insignias of sports teams and clothing brands in all different
23 colors, but were never told by a supervisor or manager to take those shirts off. (Tr. 186-87, 295,
24 327, 330-31) These employees also observed other General Assembly employees wearing non-
25 Tesla T-shirts at work with pictures or insignias of clothing companies or sports teams on them,
26 including the Golden State Warriors, the San Francisco 49ers, and the Oakland Raiders. (Tr. 188,
27 215-216, 238-39, 298, 328, 330-31) The employees did not observe any supervisors or managers
28 //

1 asking these employees to change their shirts.²³ (Tr. 188, 215-216, 239-40, 296, 298, 328, 330-
2 31)

3 On Thursday, August 10, 2017, Tesla employees, including Henry, handed out the UAW
4 T-shirts in the parking lot of the Fremont Facility. (Tr. 187, 2554, GCX 73) That same morning,
5 Supervisor Kyle Martin instructed his subordinates, including Supervisor Tope Ogunnyi, to
6 check that all employees were in compliance with the Team Wear policy. (Tr. 2545, 2553, GCX
7 73) Later that morning, a male supervisor wearing a red shirt told Henry he could not wear his
8 UAW T-shirt at work, and if he wore it again he would be sent home. (Tr. 184, 2553) His
9 supervisor, Ogunnyi, repeated this warning and gave Henry a copy of the dress code. (Tr. 185,
10 2532, 2553)

11 At 1:05 p.m. Ogunnyi reported back to Martin the names of eight employees who were
12 not in compliance with Team Wear that day, including Henry. (GCX 73) Martin responded by
13 asking "How many had UAW shirts? And that's all of Final Line?"²⁴ Ogunnyi replied "Only
14 Jason had the shirt on." (GCX 73)

15 On the same day, Tesla Supervisor Tim Fenelon told Jones that his UAW T-shirt was
16 inappropriate and that he needed to change it or he would be sent home. (Tr. 293, 325, 2404-
17 2405) Supervisor Fenelon explained that "it's not a Tesla-approved shirt" and that insignias are
18 not accepted on shirts anymore. (Tr. 293-94, 2405) Jones then changed to an all-black Tesla
19 shirt. (Tr. 294, 326, 2405) Later in the day, Ogunnyi stated that the shirt policy had changed "as
20 of right now and no shirts with emblems on them, no shirts that could scratch a car." (Tr. 295)
21 Jones responded to her that his shirt would not have scratched a car, to which Ogunnyi
22 responded that he still had to change his shirt. (Tr. 295)

23 //

24
25 ²³ In addition, Tesla employees outside of the General Assembly Department also wore
26 these black Tesla T-shirts and pants. On the contrary, Tesla-issued "Team Wear" shirts and pants
containing the Tesla insignia were worn by employees all over the facility and were available for
purchase in the Company store. (Tr. 304, 306)

27 ²⁴ Martin testified that he asked this question in order to get "a pulse for the shop" and
28 explained that he believes an associate wearing a union shirt "means that my supervisors aren't
doing what they need to do to engage the associates." (Tr. 1635)

1 At some point in August 2017, Ogunniyi told 25 to 30 Tesla employees, including Jones
2 and Cotton, that all employees were now required to wear black Tesla shirts and black Tesla
3 pants and would be sent home if they did not. (Tr. 297-98, 330) However, after August 10, 2017,
4 Henry, Jones, and Cotton continued to see other employees wear, and they themselves wore,
5 non-Tesla T-shirts with insignias other than UAW. (Tr. 186-87, 295, 327, 330-31) The
6 employees did not observe any supervisors or managers ask these employees to change their
7 shirts. (Tr. 188, 215-16, 239-40, 296, 298, 328, 330-31)

8 Tesla witnesses offered at least three different justifications for the Team Wear policy
9 during the hearing: prevention of mutilation to the vehicles, visual management of the different
10 classes of employees, and ensuring baggy or long clothes don't get caught in the machines. (Tr.
11 1370-78, 1598-99, 1637-38, 1673)

12 Henry, Jones, and Cotton testified that UAW T-shirts did not contain any material that
13 could scratch or harm the vehicles manufactured at the Fremont facility. (Tr. 182, 185, 292, 325)
14 Tesla witnesses confirmed that, based on their knowledge, a black cotton t-shirt had never caused
15 any damage to a Tesla car, (Tr. 1398, 2416-17, 2547) and such T-shirts were considered
16 mutilation-free by Tesla. (Tr. 1647, 2412, 2539) Tesla Witness Mario Pennera did not know of
17 any car damage linked to the UAW T-shirts, and the record contains no such evidence. (Tr.
18 1398)

19 Anti-union harassment was not isolated to Tesla's Fremont facility. At Tesla's
20 manufacturing facility in Sparks, Tesla Associate Manager of Manufacturing Dave Teston held a
21 private meeting with a Tesla employee who was wearing a UAW hat. (JX 3 ¶ 26; GCX 72)
22 Teston asked the employee whether he "thought this was professional to have this hat in a
23 training coordinator role" and "if he felt that it was sending the wrong message." (JX 3 ¶ 26;
24 GCX 72) The employee did not wear his UAW hat the next day. (JX 3 ¶ 30)

25 **H. TESLA SUPERVISORS REPEAT MUSK'S MESSAGE THAT UNIONIZING** 26 **WOULD BE FUTILE**

27 Mike Williams, formerly employed by Tesla as a Welder in the Body in White
28 Department, spoke with Homer Hunt, a supervisor of quality control at Tesla, in August 2017

1 about a promotion Williams had applied for, but did not receive. (Tr. 237, 2102) According to
2 Williams, during this conversation he stated to Hunt, "That's why we need a Union in here so
3 that that the right people are getting put in the right positions." (Tr. 237) Hunt responded "The
4 union's never getting in here. This is Tesla." (Tr. 238)

5 Hunt denied that the Union ever came up during the conversation, but admitted he did not
6 remember specifically everything that was said (Tr. 2104, 2106) He characterized his
7 conversation with Williams as a "yelling contest" that involved him listening to Williams "vent
8 to me about not getting the position."

9 I. TESLA TERMINATES ORTIZ AND DISCIPLINES MORAN

10 1. Tesla Responds to Ortiz's Legislative Advocacy

11 In the summer of 2017, Ortiz, Galescu, Sanchez, and Phillips, along with other Tesla
12 employees, worked to encourage California legislators to become involved in holding Tesla
13 accountable as a "fair and responsible" auto manufacturer in California. (Tr. 495, 615; GCX 46).
14 To do so, Ortiz and other members of the VOC visited California legislators, including Senator
15 Nancy Skinner, Senator Bob Wieckowski, and Senator Bill Monning, to discuss working
16 conditions at Tesla in connection with discussions about the electric vehicle rebate. (Tr. 491-93,
17 495, 615-16, 723) Ortiz went to Sacramento twice to speak with California legislators as part of
18 this campaign. (Tr. 616)

19 In response Toledano instructed Hedges, Director of Human Resources for Production
20 and Supply Chain at Tesla, to recruit workers to counteract the testimony provided by VOC
21 members. (Tr. 1212) Hedges was aware that there was a bill, which the UAW supported to
22 require greater oversight of working conditions at Tesla. (Tr. 1181-82) He was also aware that
23 Ortiz and Moran were Union supporters. (Tr. 1187) Hedges recruited two employees—Travis
24 Pratt, an equipment maintenance technician in Body in White, and Shaun Ives, an equipment
25 maintenance technician in General Assembly—who spoke with legislators and gave public
26 testimony during two state legislative hearings on September 13 and 14, 2017. (Tr. 1180-81,
27 1210-12)

28 //

1 Ortiz became aware of Pratt's and Ives's testimony during those hearings. (Tr. 495) Ortiz
2 then asked UAW political organizer Hannah Birnbaum to identify the individuals for him, but
3 she was unable to do so. (Tr. 496) Birnbaum sent him an email with the video links of the state
4 hearings so that he could identify them himself. (Tr. 497; 4 TR 618; CPX9; CPX10)

5 Ortiz made several attempts to open the video links but was unable to do so, so he asked
6 Moran for help. (GCX 43-001; 3 TR 498, 14-17; 5 TR 723) Ortiz and Moran wanted to confirm
7 the individuals testifying in the state hearings "against the legislative bill [that would require]
8 auto makers to be certified as fair and responsible in the treatment of their workers" were in fact
9 Tesla employees. (GCX 43; 5 TR 723)

10 After watching the state hearings to listen for the employees' names, Moran used his
11 personal phone to log onto Workday (Tr. 723-24) and typed in "Travis Pratt," "Shaun Ives," and
12 "Jean Osbual" to verify their employment. (Tr. 723-24) Moran also took screen shots of the
13 individual profile photos and sent each of these screen shots to Ortiz via text messages. (GCX
14 43-002-004; Tr. 505-07, 723-26, 753)

15 Ortiz was upset that Pratt and Ives had provided public testimony to legislators that the
16 working conditions at Tesla were fine, and in no need of any attention, because his experience
17 was different. On the day he received the screenshots, September 14, 2017, he posted the
18 screenshots of Pratt and Ives on the private Facebook group "Fremont Tesla Employees for
19 UAW Representation," which was limited to bargaining unit employees of Tesla, accompanied
20 by the words "these suckasses are lying in Sacramento." (GCX 28; Tr. 508)

21 Ortiz's post included photos of Pratt's and Ives' faces, their job titles at Tesla, and Pratt's
22 salary information. Pratt and Ives had, in fact, revealed all of these details during their public
23 testimony on behalf of Tesla:

24 ***Hi, my name is Travis Pratt. I'm a Lead Maintenance Technician at Tesla, Fremont.***
25 ***I've been working there just under two years now. . . .***

26 [S]o as far as the ability to move up and benefit at TELSA, there are always
27 opportunities, there's always a path to that, uh—I think "middle income" that was the
28 word that used there—um, ***I don't mind sharing, last year, I grossed \$130,000, at 26 years old. . . .***

//

1 *Hi, my name is Shaun Ives, I'm a maintenance technician.* I've worked at Tesla for
2 four (4) years. . . .

3 (GCX 28; CPX 9) Ortiz did not post any information that was not public or that could be
4 considered sensitive.

5 Approximately two hours later, Ortiz removed the post after receiving a message from
6 Pratt telling him that it was not a "good way to start [communications]." (Tr. 515-16; GCX 80)
7 Pratt did not complain about the posting of his picture or his salary information when he asked
8 Ortiz to remove the post. (Tr. 627; GCX 80)

9 **2. Toledano and Hedges Direct Employee Relations to Investigate Ortiz**

10 Despite Ortiz's decision to remove his post, Hedges, who had been involved with anti-
11 union efforts since Ortiz, Moran, and others began organizing, took it upon himself to involve
12 the Employee Relations team with Ricky Gecewich.²⁵

13 According to Hedges, Pratt contacted him via text after receiving screen shots of Ortiz's
14 Facebook post from fellow coworker Bryan Kostich. (Tr. 1179, 1183; GCX 28) Pratt was
15 allegedly "afraid²⁶ that something like that would have happened." (Tr. 1213) However, the text
16 messages Pratt sent Hedges not only do not disclose any signs of fear, but show the opposite.

17 The texts depict the mockery of a frustrated Ortiz as Pratt texted Hedges, "[l]ooks like we
18 got under some people's skin" followed by a smiley face emoticon. (GCX 28; 7 TR 1215-1216)
19 Hedges did not ask him about any fear, but did inquire whether the posting was on Facebook, to
20 which Pratt replied "Yea lol [laugh out loud]." (GCX28; 7 TR 1215-1216, 1218) Far from being
21 scared, Pratt was amused by Ortiz's frustration.

22 After his conversation with Pratt, Hedges shared the text messages with Employee
23 Relations Director Carmen Copher and Jamie Bodiford, General Counsel for Tesla. (Tr. 1213,
24 1217) He did so despite knowing that Ortiz posted these photos on a union organizing Facebook

25
26 ²⁵ No evidence was presented that Pratt himself sought to file a complaint with Hedges or
Employee Relations Investigator Gecewich.

27 ²⁶ Hedges does not remember what, if anything, Pratt said about his reaction to this post,
28 i.e., whether Pratt claimed he felt targeted, threatened, or harassed. (Tr. 1236) Pratt did not
testify.

1 page. (Tr. 1213, 1217) After alerting Copher, Hedges followed up with Gecewich²⁷ in person
2 "that Monday morning" to give Gecewich a "heads up" that Copher²⁸ would likely be submitting
3 an investigation request his way based on Pratt's report about Ortiz's post. (Tr. 1184, 1208, 1234,
4 1802)

5 There was no evidence that Copher submitted anything to Gecewich to follow up
6 concerning Pratt's comments on Ortiz's post. Instead, Gecewich initiated his investigation into
7 Ortiz after receiving Hedges's directive on September 19, 2017. (Tr. 1801) At the time of the
8 investigation, Gecewich was not relying on any specific policy that an employee be truthful. (Tr.
9 1804-05)

10 **3. Gecewich Conducts His Investigation**

11 Gecewich began his investigation by contacting Pratt via telephone on September 19,
12 2017. (GCX 63; 10 TR 1805) Pratt allegedly shared with Gecewich that he felt it was
13 inappropriate for Ortiz to post his name, picture and salary on Facebook.²⁹ (Tr. 1807) Gecewich
14 did not ask Pratt whether the information he was concerned about had already been made public;
15 if he had he would have discovered that Pratt himself had revealed this information during his
16 testimony before the California Legislature. (Tr. 1808-09)

17 After speaking with Pratt, Gecewich called Kostich to understand how he came across the
18 posting that caused Pratt concern. (Tr. 1815) At this time, Gecewich learned Kostich was privy
19 to the private Facebook page where Ortiz made the posting because at some point during his

20 _____
21 ²⁷ Hedges' claim that he did not direct Gecewich to begin an investigation cannot be
22 squared with the evidence. (Tr. 1207) Hedges oversaw employee investigations at Tesla until the
23 Employee Relations department was established in June 2017 (Tr. 1203), and was, as a result,
24 intimately familiar with the process of investigations and what his conversation with Copher and
25 Gecewich would trigger. In fact, he testified that he knew it was likely that an investigation
26 would ensue after his conversation with Gecewich. (Tr. 1209) This was the catalyst for the
27 investigation into Ortiz's protected concerted activity on social media (Tr. 1210) as Gecewich
28 was not aware of the Facebook posting prior to Hedges' communication. (Tr. 1800)

25 ²⁸ Hedges testified that he forwarded Pratt's complaint to Copher. Tesla did not produce
26 that document despite the Administrative Law Judge's orders that it do so. (Tr. 1184, 1234; CPX
7)

27 ²⁹ Gecewich's notes taken contemporaneously when speaking with Pratt do not reflect
28 any concern on Pratt's part about the use of his name, picture, or salary information. (GCX 63)
Moreover, Pratt never actually shared his concern with Gecewich. It was Gecewich who reached
out to Pratt on Hedges's command.

1 employment, Kostich agreed to be part of the union organizing page led by Moran after being
2 contacted by "José Organizer." (GCX 64; Tr. 1815) Despite having notice that the posting was
3 related to the union organizing campaign at Tesla, Gecewich proceeded with his investigation.³⁰

4 Gecewich began the meeting with Ortiz on September 21, 2017 by showing Ortiz a
5 screenshot of his posting.³¹ (GCX 28; Tr. 517-18) Immediately, Ortiz interrupted Gecewich and
6 apologized for his posting. (Tr. 518, 645) Ortiz said he recognized that his posting bothered Pratt
7 and, upon re-reading it, he removed it as quickly as he could. (Tr. 518) Gecewich brushed aside
8 Ortiz's remorse, stating his apology had "no bearing" on the meeting and that it was "irrelevant."
9 (Tr. 518)

10 Instead of allowing Ortiz to explain the motivation behind the posting of Pratt's and Ives's
11 photos on Facebook, Gecewich interrogated Ortiz about whether he took the screenshots himself
12 and, if not, where he had received the screenshots. (Tr. 521, 532) Ortiz did not want to disclose
13 Moran's name, the person who sent him the screenshots of the three employees testifying on
14 Tesla's behalf in Sacramento, because he was under the assumption that he was "*already*
15 terminated" and did not want to bring "no one else into it and have them fired with [him] because
16 [he] was scared. [He] was very scared, for [himself] and José." (Tr. 524; 529) Ortiz did not want
17 Tesla to terminate Moran as well. (Tr. 529)

18 Despite being afraid, Ortiz never refused to answer a question.³² (Tr. 521) When pressed
19 over and over about the screenshots, he said that he did not take the screenshots himself but did
20 not remember from whom he had received them because there were at least three different
21 sources. (Tr. 521, 523) Unsatisfied with Ortiz's answer, Gecewich asked Ortiz to look through
22 his cell phone to see if there was any cell phone history that would enlighten Ortiz. (Tr. 524,
23 525)

24 _____
25 ³⁰ On September 20, 2017, Ortiz received an email from Gecewich asking him to attend a
meeting the following day. (Tr. 517) Ortiz was unaware of the purpose of the meeting. (Tr. 517)

26 ³¹ Gecewich testified that he saved a copy of the redacted version of this document in his
27 files, which Tesla had full access to but yet did not produce pursuant to the Charging Parties'
subpoena request, despite the Administrative Law Judge's order to produce. (Tr. 1823; CPX 7)

28 ³² Ortiz was not completely truthful with Gecewich, as he later told him on October 12,
2017. (Tr. 523, 529)

1 Ortiz explained that he did not have the phone where he received the screenshots.³³

2 Gecewich asked to see his phone and went through Ortiz's cell phone looking for evidence of
3 these screenshots.³⁴ (Tr. 525-26)

4 After failing to get Ortiz to give him Moran's name, Gecewich asked a systems analyst
5 employee, Raj Nanda, to download and share Workday logs reflecting the names of those who
6 had accessed Pratt's and Ives's Workday profiles. (GCX 81; Tr. 1828-29) Gecewich urged Nanda
7 to "help turn this around as soon as possible" because it was a case that was "being closely
8 monitored by Gaby [Toledano] and [he] was providing updates as they come in." (GCX 81)

9 The Workday logs showed the users "jhedges [Hedges]" and "jmoran [Moran]" viewed
10 the profiles of Pratt and Ives in September 2017. (GCX 81)³⁵ Gecewich then scheduled a meeting
11 with Moran. (Tr. 1832)

12 Gecewich³⁶ pulled Moran off his shift to discuss his investigation into Moran's activity on
13 Workday.³⁷ (Tr. 727-28) Gecewich insisted on interrogating Moran for his use of Workday even
14 though he already knew that Moran had accessed the Workday profiles of Pratt and Ives. (GCX
15 81; Tr. 730-31, 1834)

16 Moran was candid immediately. (Tr. 731-32) Moran explained that he and Ortiz wanted
17 to find out whether the three individuals testifying in the public hearings were employed by

18 //

19 _____
20 ³³ Ortiz's phone broke a few days prior to meeting with Gecewich and had it replaced on
September 20, 2017. (Tr. 620-21)

21 ³⁴ Gecewich interrogated Ortiz about why he had a new phone and asked about his old
22 phone and the need for a new one. (Tr. 526)

23 ³⁵ Gecewich never asked Hedges why his name was populated by the Workday access
24 logs. Moreover, Gecewich testified that he never shared Ortiz's name with Nanda, but in her
email dated October 6, 2017 at 11:53 a.m., Ms Nanda wrote "riortiz did not view the profiles
pages during this time." (GCX 81)

25 ³⁶ Gecewich also told Moran that the meeting was confidential between the Company and
26 Moran and that it should not be made public, i.e., shared with other employees. (Tr. 729; GCX
67)

27 ³⁷ Moran explained that he accesses Workday to view the profiles of fellow employees to
28 determine their titles and start date. (Tr. 731) The titles and start date, he believes, give him a
better understanding about their advancement in the company relative to his title and start date.
(Tr. 731)

1 Tesla. (Tr. 732) He shared with Gecewich that he looked at the profiles of Travis Pratt, Shaun
2 Ives, and Jean Osbual and shared the screenshot images with Ortiz. (Tr. 735, 1834)

3 In fact, Gecewich was aware that Moran accessed the profiles of Pratt, Ives, and Osbual
4 at approximately 5:55 p.m. on September 14, 2017, which "corresponds to when these three
5 Tesla employees went to Sacramento to speak with state legislators about their experiences at
6 Tesla."³⁸ (GCX 86) Nonetheless, Gecewich claims that he did not bother to find out whether
7 Moran knew why the three employees were in Sacramento or why he was concerned that they
8 were testifying. (Tr. 1835) Moreover, Gecewich did not show the Facebook post in question to
9 Moran. (Tr. 1836)

10 Disregarding the openness expressed by Moran, Gecewich asked to physically see Moran
11 log in to his Facebook to look for the conversation between Moran and Ortiz. (Tr. 732-33, 1837)
12 Since Moran was unsuccessful, Gecewich asked him to look through his text messages. (Tr. 733)
13 Gecewich asked Moran for a copy of the text messages and for the screenshots "to prove. . . that
14 he didn't do anything wrong." Moran was again candid and compliant. (Tr. 735, 1838)

15 On or around October 12, 2017, Gecewich met with Ortiz. Gecewich again asked Ortiz to
16 keep the meeting confidential, to which Ortiz agreed.³⁹ (GCX 68; Tr. 527-28) Despite having all
17 of the facts before him about Ortiz's Facebook posting, Gecewich pressed Ortiz as to whether he
18 did or did not remember from whom he received the screenshots. (Tr. 529, 1842) Ortiz remained
19 //

20
21 ³⁸ GCX 62, the version produced by Tesla originally, differs from the version (GCX 86)
22 which it produced after the Administrative Law Judge ordered it to provide all non-privileged
version of Gecewich's investigative report. See Section V below.

23 ³⁹ Ortiz did not share *any* of the meetings that he attended with Gecewich with anyone,
24 including Board attorney Rodriguez-Ritchie, because Gecewich had begun each meeting with a
25 confidentiality admonition, telling Ortiz that it was imperative that Ortiz refrain from discussing
the conversations had during the meeting, the substantive topics covered in the meetings, or
26 triggering events for the investigation with anyone, including with other fellow employees. He
also recommended that Ortiz refrain from speaking with people outside of management.

27 Ortiz believes strongly in "keeping his word" and honored Gecewich's request for
28 confidentiality. He believed that this confidentiality request extended beyond his employment
with Tesla and therefore did not share any details concerning his meetings with Gecewich with
the Board agent because he would be breaking the confidentiality agreement, damaging any
opportunity he might have had to return to work with Tesla.

1 firm in his protection of Moran's identity because he was scared he would have Moran
2 terminated for sending the photos to him if he revealed his name. (Tr. 529)

3 Seeing that Ortiz was not going to share Moran's name, Gecewich finally admitted to
4 Ortiz that he knew that Moran had sent Ortiz the screenshots. (Tr. 530) Believing that
5 Gecewich's investigation had become a fishing expedition for information he already knew, Ortiz
6 asked Gecewich bluntly "So I'm fired? [A]re you going to fire me or are you guys just toying
7 with me?" (Tr. 530, 531) Gecewich ended the meeting. (Tr. 531)

8 **4. Tesla Management Accepts the Recommendation To Terminate Ortiz**

9 After meeting with all of the involved parties, except Shaun Ives, Gecewich met with the
10 decision makers in Ortiz's case: Director of Manufacturing Stephen Graminger (Tr. 1262), HR
11 Partner for Body in White, SchTawney McIntosh, and Ortiz's direct manager Juan Martinez,
12 Shop leader for Model S and X (Tr. 1288) to obtain Graminger's approval for Ortiz's
13 termination.⁴⁰

14 Gecewich testified that he had invited Martinez and McIntosh to be part of the process so
15 they could provide input concerning Ortiz's employment history and work performance. (Tr.
16 1928-29) However, it does not appear that McIntosh made any contribution to the review of
17 Gecewich's recommendation during this meeting. (Tr. 1929) Further, by the time he met with the
18 decision makers, Gecewich's recommendation for termination had already considered all the
19 factors concerning Ortiz that McIntosh and Martinez were supposed to address and been
20 approved by the legal department. (Tr. 1930-31)

21 Gecewich provided one copy of his investigation report to the decision makers for Ortiz's
22 termination—Graminger, Martinez, and McIntosh—and they had one half hour to read the report
23 and discuss. (Tr. 1919) Gecewich does not recall whether each person read the report but does
24 recall "going over" the report with them. (Tr. 1289, 1919)

25 //

26
27 ⁴⁰ Despite referring the complaint to Copher for investigation and recommending that
28 Graminger be the decision maker because of his objectivity, Hedges never followed up with
either Copher or Graminger or apprised Graminger of his decision-making role in Gecewich's
investigation. (Tr. 1242)

1 Significantly, Gecewich and Graminger testified that Gecewich showed his investigation
2 report (GCX 62), which omitted the fact that Moran had accessed the three profiles because the
3 employees were testifying in Sacramento, to the decision makers, instead of an earlier version
4 that included Moran's motivation. (GCX 86) Ultimately it did not matter which version
5 Gecewich showed them because his termination recommendation was set, irrespective of an
6 incomplete investigation report. (Tr. 1289, 1919).

7 Even though Hedges identified Graminger as the decision maker to Gecewich (Tr. 1187),
8 it is unclear whether Graminger knew exactly what was occurring.⁴¹ He testified that he first
9 learned about Ortiz and the investigation when McIntosh emailed him to meet on October 17,
10 2017 at 11:23 a.m. (Tr. 1311; RX 15) Once at the meeting, he was first told by Gecewich that
11 both men, Ortiz and Moran, posted information on a public rather than private website including
12 another person's telephone number⁴² and personal information (Tr. 1288, 1322) and that Ortiz
13 lied about posting the information. (Tr. 1321)

14 Graminger did not bother to conduct his own investigation or speak to Ortiz to ask
15 anything about the incident. (GCX 62; Tr. 1302, 1304) Graminger did not ask either McIntosh,
16 Gecewich, or Martinez whether they asked Ortiz why he did not want to disclose where he got
17 the screenshots. (Tr. 1324)

18 He also assumed it was a public website, but never asked Ortiz or Gecewich whether it
19 was or was not. (Tr. 1322) In fact, he testified that he only had the investigative report that
20 Gecewich presented for five or fifteen minutes.⁴³ (GCX 62; Tr. 1302, 1304) Furthermore,

21 //

22
23 ⁴¹ Graminger was not aware whether or not Moran worked in his area and under his
24 supervision (Tr. 1288) and testified that he could not recall the reason Ortiz and Moran were
interested in Ives and Pratt. (Tr. 1313)

25 ⁴² Graminger admits he was in error about the posting of the telephone number. (Tr.
1314)

26 ⁴³ Graminger testified that the UAW was not mentioned or discussed during his meeting
27 with Gecewich. (Tr. 1301) That could only be true if no one at the meeting discussed the
28 contents of Gecewich's report (GCX 62), which detailed that Moran was asked by the UAW to
verify whether Pratt, Ives, and Osbual were actual Tesla employees after they testified in
Sacramento on behalf of Tesla and against the bill being pushed by the UAW. (Tr. 1316)

1 Graminger believed that Gecewich was relying on Tesla policy⁴⁴ for his recommendation to
2 terminate Ortiz, but he could not identify the policies, did not review any policy about lying, and
3 was aware of "nothing specific" regarding any policies Ortiz violated. (Tr. 1299, 1308)

4 Graminger expressed some reservations about following Gecewich's recommendation for
5 termination since these employees had been engaged in protected concerted activity, so he
6 followed up with his superior, Vice President of Production Peter Hochholding, who ultimately
7 supported the termination of Ortiz. (RX 15) Graminger never showed Hochholding the
8 investigation report created by Gecewich, did not discuss the details of the investigation report or
9 of the circumstances surrounding Ortiz's post with him, never pulled Ortiz's personnel files to
10 review his work performance with Hochholding, and never engaged in any investigation of his
11 own to decide whether to terminate Ortiz or take other appropriate disciplinary action. (Tr. 1290)

12 **5. Terminating and Disciplining the Most Vocal Union Leaders**

13 Graminger emailed Gecewich to authorize Ortiz's termination. On October 18, 2017,
14 Gecewich hosted Ortiz's termination meeting. (RX 15; Tr. 531-32)

15 As soon as Ortiz sat down, McIntosh placed the screenshots of his September 14, 2017
16 Facebook post in front of him. Before she could finish her question about the screenshots, Ortiz
17 again apologized profusely for posting. (Tr. 532) That apology did not, however, make a
18 difference. (Tr. 532) Gecewich told Ortiz that he was being terminated because his posting
19 violated the confidentiality agreement. (Tr. 532, 643)

20 Later, on May 20, 2018, Tesla CEO Elon Musk tweeted on his Twitter account
21 @elonmusk: "Only known union person fired was a guy who repeatedly threatened non-union
22 supporters verbally & on social media & lied about it." (GCX 38, JX 4, ¶ 4) This Tweet is still
23 posted on Musk's Twitter account and viewable by the public.⁴⁵ (JX 4, ¶ 5). Tesla now takes the
24 position that it terminated Ortiz for lying during Gecewich's investigation. (GCX 62)

25 //

26
27 ⁴⁴ Gecewich testified that he was in fact *not* relying on any Tesla policy that required
employees to be truthful during investigations. (Tr. 1288, 1879)

28 ⁴⁵ Musk did not testify at the hearing.

1 To close out his investigation, on October 19, 2017, Gecewich and Emmy Cruz met with
2 Moran to issue him a warning about his use and access of Workday. (Tr. 738:12-16) Gecewich
3 informed Moran, for the first time, that Workday was only for "business purposes." (Tr. 738;
4 GCX 42) No supervisors, managers or human resources employees had ever discussed any
5 policies about using Workday with Ortiz, Moran, or any of the other VOC members prior to
6 October 2017. (Tr. 389-90, 442, 672)

7 Furthermore, according to Phillips and Moran, no one at Tesla ever told them that they
8 could only use Workday for what Tesla deemed to be legitimate business purposes. (Tr. 390,
9 672) And prior to October 2017, no one at Tesla discussed any limits on using Workday with
10 Moran including any prohibition on screenshots. (Tr. 672) The same is true for Ortiz prior to
11 September 2017. (Tr. 442-43)

12 No one from Tesla management discussed how to use Workday with Ortiz (Tr. 442)
13 except to explain that it was a tool for communication. (Tr. 442) Ortiz and Moran first learned
14 that they could be disciplined for their use of Workday for "personal purposes and without a
15 proper business justification" when they were terminated and disciplined, respectively. (GCX 42)

16 **J. MUSK THREATENS TO TAKE AWAY EMPLOYEES' STOCK OPTIONS IF**
17 **THEY UNIONIZE**

18 An unidentified Twitter user @dmatkin137's tweeted "what about unions?" to Musk. On
19 May 20, 2018 at 11:44 p.m. Musk responded:

20 //
21 Nothing stopping Tesla team at our car plant from voting union. Could do so
22 tmrw if they wanted. But why pay union dues & give up stock options for
23 nothing? Our Safty record is 2X better than when plant was UAW & everybody
24 already gets healthcare.

25 (GCX 56, JX 4, ¶ 6) This Tweet is still posted on Musk's Twitter account and viewable by the
26 public. (JX 4, ¶ 7) It has been "re-tweeted," or re-published, by other Twitter users at least 89
27 times, "liked" by 1,491 Twitter users, and commented upon directly in Twitter at least 296 times.
28 (GCX 56)

1 Musk himself replied to his tweet several times, garnering thousands more likes and re-
2 tweets. (GCX 69) Numerous media outlets, including the Mercury News and Bloomberg,
3 reported on and republished Musk's stock option tweet. (RX 45)

4 III

5 ARGUMENT

6 **A. TESLA'S CONFIDENTIALITY POLICY UNLAWFULLY DENIES**
7 **EMPLOYEES THEIR RIGHT TO SHARE INFORMATION ABOUT THEIR**
8 **WORKING CONDITIONS WITH EACH OTHER, THEIR UNION AND THE**
9 **MEDIA [SAC ¶ 7(a)]**

10 Tesla's initial response to the Union's organizing drive, coming two months after the
11 Voluntary Organizing Committee went public, was to adopt a policy that barred virtually all
12 communications by employees about their terms and conditions of employment with anyone
13 outside Tesla. It did this by classifying all "information about...employees" as confidential
14 information and banning its employees from writing about such supposedly confidential
15 information or discussing it with anyone outside Tesla.

16 This is flatly illegal. Employees have the right under Section 7 of the National Labor
17 Relations Act to share information about their working conditions. *Republic Aviation Corp. v.*
18 *NLRB*, 324 U.S. 793, 803 (1945). This protection includes employee communications about
19 working conditions with third parties, such as a union representative, the media, or the public.
20 *Allied Aviation Service Co. of New Jersey*, 248 NLRB 229, 231 (1980); *Hacienda de Salud-*
21 *Espanola*, 317 NLRB 962, 966 (1995); *Valley Hospital Medical Center*, 351 NLRB 1250, 1252
22 (2007). Employees do not "lose their protection under the 'mutual aid or protection' clause [of
23 Section 7 of the Act] when they seek to improve terms and conditions of employment or
24 otherwise improve their lot as employees through channels outside the immediate employee-
25 employer relationship." *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978).

26 //

27 //

28 //